**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

## SPECIAL CIVIL APPLICATION No. 14417 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.S.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KAMLESH @ DEVU HIRABHAI RATHOD THR' FRIEND-IKBAL ABDUL PATEL**
**Versus**
**STATE OF GUAJRAT THR' SECRETARY AND OTHERS**

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**Appearance :**
MS BANNA DUTTA with MR AR SHAIKH for the Petitioner
MRS HB PUNANI, ASSISTANT GOVERNMENT PLEADER for the Respondents

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**CORAM : HONOURABLE MR.JUSTICE A.S.DAVE**

**Date : 30/08/2005**

**ORAL JUDGMENT**

This petition under Article 226 of the Constitution of India challenges the order of detention dated 09.06.2005 passed by respondent No.2 in exercise of power under Sub-section(1) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, 'the PASA Act'), detaining the detenu as bootlegger within the meaning of Section 2(b) of the PASA Act.

The order of detention dated 09.06.2005 mentions about one CR No.115 of 2005 registered at Chowkbazar Police Station, Surat for the offences punishable under Section 66(1)b, 65, a, e, 81, 83, 116(b) of Bombay Prohibition Act and Section 120(b) of the Indian Penal Code. The said offence was registered on 18.05.2005. This solitary crime, according to detaining authority disturbs the public order, since the activities carried out by the detenu is prejudicial to the

public at large. It also affects the health and hygiene of the general public and it may affect to public order and public health of the public at large. In such circumstances, the remedy available is only to detain the detenu under the preventive detention law viz. the PASA Act and, therefore, subjective satisfaction was arrived at by the detaining authority to detain the detenu and the order is passed.

Learned advocate for the petitioner Ms.Banna Dutta has submitted that the solitary instance of registration of CR No.115 of 2005 for the offences under the provisions of Bombay Prohibition Act against the detenu cannot be said to be disturbing the public order and this alleged activity against the detenu cannot be said to be prejudicial to the society or the public at large in any manner. It has no potentiality to disturb the public order, peace at public place. She submitted that there is

nothing compelling to the persons in the society to buy and to consume the liquor. In such circumstances, remedy under ordinary law for such solitary instance, the authority can very well exercise power to control such crimes.

In support of her arguments, she has relied on the decision reported in AIR 2002 Supreme Court Weekly 1322 and certain observations made by their Lordships of the Apex Court with regard to “personal liberty, a fundamental right”. She submitted that having placed reliance on 1973(3) S.C.C. 250 and 1974(4) S.C.C. 514, the Apex Court has elaborately laid down the principle of governing the fundamental right of the citizen with regard to the personal liberty.

She has also placed reliance on the decision in the case of **DARPAN KUMAR SHARMA ALIAS DHARBAN KUMAR SHARMA VS. STATE OF TAMIL NADE AND OTHERS**. reported in AIR 2003 S.C. 971, where the detenu

was detained being a dangerous person in exercise of power under Section 3 of Tamil Nady Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, for allegation of robbing a person at knife point in public place by the detenu and the Apex Court found on the facts of that case that, no material on record was placed to show that potentiality of incident was so grate as to disturb even tempo or normal life of community in locality or disturb general peace.

Therefore, according to learned advocate for the petitioner, in the present case also, the solitary instance of registration of offence under the Bombay Prohibition Act against the detenu cannot be said to have potentiality of disturbing even tempo and public order and, therefore, there is total not-application of mind on the part of the detaining authority in passing

the order impugned. She submitted that on this ground alone, the order of detention dated 09.06.2005 passed by respondent No.2 required to be quashed and set aside.

I have also heard learned Assistant Government Pleader, Mrs.H.B.Punani, but could not carry her arguments further to justify the disturbance of public order by such a solitary instance as relied on by the detaining authority.

Having heard the learned counsels for the parties, I am of the opinion that the order of detention is a non-application of mind on a germane and relevant material of registration of solitary instance against the detenu under the provisions of Bombay Prohibition Act, which lacks the potentiality of disturbing even tempo of public order. The decision of the Apex Court in the above Tamil Nadu Preventive Law (Supra) is clearly applicable in the present case. Even this

Court in reported decision in 2004(1) GLR 864, in the case of **SANDIP OMPRAKASH GUPTA VS. STATE OF GUJARAT AND OTHERS** has taken a similar view and held that, real test is that fall out and the extent and ratio of the alleged activities must be of such a nature that travel beyond the capacity of the ordinary law to deal with the detenu or to prevent the subversive activities affecting the community at large or large section of society.

In the present case, by no stretch of imagination, it can be said that registration of solitary offence against the detenu under the provisions of Bombay Prohibition Act can be said to be disturbing the public order or affects in any manner to the public at large and, therefore, the subjective satisfaction arrived at by the detaining authority is erroneous and not germane to the relevant facts.

In the circumstances, the order of detention dated 09.06.2005 is held illegal and contrary to the provisions of Article 22 of the Constitution of India and is hereby quashed and set aside. The detenu is to be set at liberty forthwith, if he is not required in any other case by any authority. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(ANANT S.DAVE, J.)

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